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Part 1 - Representing Yourself in Probate Court

The court system is here to provide fair, orderly, and peaceable resolutions of disputes. The court does not take sides, nor does it advocate for an individual person. It is not like court TV. The following information is NOT all you need to know about the law or the rules applicable to your case. It may help you, however, to avoid some of the typical problems people have when they represent themselves in court.

The following is for your convenience. It does not cover all situations. If there is a conflict between the information contained in this document and any court rule, statute, or case law, then you must comply with the court rule, statute, or case law.



WARNING!

Rely on this information at your own risk. If you have questions or concerns about legal issues, consult with an attorney. The court does not appoint attorneys to represent competent persons in probate cases.

1. The Right to Represent Yourself in Court

You have the right to represent yourself in court. The legal term for a person who represents himself or herself is *in propria persona* or *pro se*. Such status is frequently referred to as APro Per.≡ This right, however, does not permit you to represent the interests of other people in court if you are not an attorney. A power of attorney does not permit you to represent others in court.

You do have the right to hire an attorney to represent you at your own expense. If you choose to represent yourself, you do so at your own risk. It is not the Judge=s job to protect you from making mistakes; nor will the Judge give you advice about how to proceed with your case.

2. Court Personnel

A. The Judge and the Judge=s staff

Neither the Judge nor the Judge=s staff are permitted to answer questions about your case, instruct you on how to proceed, or give you legal advice. Do not call the Judge or the Judge=s staff to talk about or tell them about your case.

Basic fairness requires the Judge to give each party a fair opportunity to be heard and to respond to what the other party tells the Judge. You should not contact the Judge or the Judge=s staff without the knowledge of the other interested persons. To contact the Judge=s office is known as *ex parte* communication and is prohibited. Neither party to the case should have any contact with the Judge or judicial staff without the other party being present.

You may, however, provide courtesy copies to the Judge of documents you have filed and provided to all of the interested parties to the case. You must indicate when and to whom you have provided copies on the last page of the document, or on a Proof of Notice, if one is required.

B. The Clerk of Court

The Clerk of the Superior Court is the record keeper for the court as well as the collector of all fees, fines, bonds, and restitution. The Clerk=s Office is the first stop in initiating any Superior Court action in probate.



NOTE!

The Clerk of Court and her staff are not permitted to answer questions about your case, tell you what to do, or to give you legal advice. Do not call the Clerk of the Court to discuss your case.

C. Court Reporters

Arizona Superior Courts are courts of record except as to some matters heard by Court Commissioners. A court reporter takes down everything that is said in order to make a record of the case. It is extremely important that you speak clearly and slowly. Do not interrupt another person when it is his or her turn to speak because the court reporter can only record one

person at a time.

1. How to order a transcript of a hearing

In certain circumstances, you may need to obtain a transcript of a hearing. Transcripts of court hearings, if available, can be ordered directly from the court reporter. After each hearing, the court will issue a Minute Entry. A Minute Entry is the document that records the court=s findings and any orders that were entered. It is the official court record of a hearing. If you need to order a transcript of a hearing, look for the court reporter=s name on the Minute Entry from that hearing. Call the managing court reporter=s office at 740-3114 to obtain the phone number of the court reporter who covered the hearing. Contact the court reporter to request a copy of the transcript. Each court reporter sets his or her own rates per page. Be sure to ask what that charge will be. Preparation of the transcript may take several weeks. The Judge does not control the court reporter=s work or the rates charged.

D. The Pima County Probate Registrar

The Pima County Probate Registrar=s duties include the following:

1. Review and grant or deny applications for informal appointment of personal representative and applications for informal admission of will to probate.
2. Review affidavit of succession to real property and issue or refuse to issue certified copy of the affidavit for recording.
3. Review appointment of foreign conservator.
4. Review appointment of foreign personal representative and proof of authority bond.
5. Review and grant or deny appointment in subsequent administration.
6. Review and grant or deny applications for endorsement of conservator=s letters
7. Review and grant or deny applications for appointment of special administrator.
8. Close cases 1 year after the filing of closing statement.



The Registrar and her staff are not permitted to answer questions about your case, instruct you on how to proceed, or give legal advice

NOTE!

E. The Pima County Probate Counsel

The probate counsel is a lawyer who works for the court and who has expertise in probate law. General questions regarding procedures or referrals to resources may be submitted by e-mail to

probatecounsel@sc.co.pima.az.us. The Probate Counsel cannot change a hearing date, grant any relief, change a Judge=s order, or grant a party additional time to comply with the court=s orders.

The Probate Counsel is not required to respond to your e-mail. *The Probate Counsel may advise the Probate Judge if your e-mail is inappropriate or offensive.* Email communications to anyone at the court are subject to public records disclosure requirements. They are **NOT** confidential, protected or private.

The Judge may decide that your e-mail and any response from Probate Counsel be made part of the case file and copies may be provided to opposing parties.



The Pima County Probate Counsel is NOT a public attorney and is NOT able to offer legal advice to you concerning your case

NOTE!

3. Probate Law

Probate law is found in statutes, court rules, and case law. Statutes and case law govern the *substantive law* of probate cases. The Arizona Rules of Court - which include the Arizona Rules of Civil Procedure, and the Pima County Local Rules, govern the *procedure* that all parties who bring a case to court must follow.

A. STATUTES

Arizona adopted a version of the Uniform Probate Code in 1974.

Arizona=s probate statutes are found in Title 14 (Volume 6) of the Arizona Revised Statutes. (Not all statutes that may be important to your case are found in Title 14.)

B. RULES OF COURT

The rules of court that apply to probate cases in the Arizona Superior Courts are found in Arizona Rules of Court. These rules include the Rules of Civil Procedure and the Pima County Local Rules. The rules apply to all parties including parties who represent themselves. It is not fair to require one party to a case to obey the rules but not require the other parties to follow those same rules. The following rules apply to probate cases:

- i. Arizona Rules of Civil Procedure
- ii. Arizona Rules of Evidence
- iii. Pima County Local Rule 9

C. CASE LAW

The decisions of the appellate courts in Arizona are contained in the Arizona Reports.

D. WHERE TO FIND STATUTES, RULES AND CASE LAW

The **statutes** are available online at www.azleg.state.az.us.

The **rules** are available online at www.supreme.state.az.us/rules/.

The **Local Rules for Probate** - Local Rule 9 - are available online (www.sc.co.pima.az.us). The local rules can also be obtained from probate clerk=s office, if you go there in person

In addition to online research, the statutes, rules, and case law are available at the following locations:

**The Pima County
Law Library**
Pima County Court
House, 2nd Floor
110 W. Congress
Tucson, AZ 85701
Phone: 740-8456

**The University of Arizona
College of Law**
1201 E. Speedway
Tucson, AZ 85721
Phone: 621 1413

4. Procedures for Bringing a Case to Court

A. PROCEDURAL DUE PROCESS: FORMAL PROCEEDINGS

What if your opponent sent you notice of an important hearing on the same day it was to occur? You would not be able to prepare your case or summon witnesses on your own behalf. What if you arrived at hearing only to find that the judge had read letters from the other side=s witnesses? Would you feel that the judge was prejudiced? Would you feel deprived of the right to cross-examine those witnesses?

Both Federal and Arizona law entitle each person to due process. Each party has the right to sufficient advance notice of hearings. Each hearing must take place before an unbiased judge or commissioner. Each party will have the opportunity to present legally admissible evidence and to have his or her point of view heard.

A procedural due process≡ is a collection of procedures which assure each side a fair opportunity to explain his or her case to an impartial judge. In Arizona, procedural due process requires four steps as follows:

1. Petition, complaint, or other pleading

The party who is asking the court=s assistance must file a **petition, complaint, motion, or other pleading**. These are known collectively as Apleadings.≡ Pleadings are your request for relief and should state two things: first, the important facts of the case; and second, the law as it applies to your case.

2. Notice to interested persons

The party must give **notice** to all interested persons by sending or delivering (or in some cases by publishing in a newspaper) a copy of the petition, complaint, motion, or other pleading and a copy of the notice or order that sets the hearing date. This notice must be

given as required by the applicable rule or statute. For example, in many probate matters, notice must be given at least 19 days before the hearing if notice is given by mail. [A.R.S.   14-1401; Arizona Rules of Civil Procedure 6(e)]. The statutes and rules determine to whom notice must be given and the deadline by which notice must be given. See Section 4(C) for more information about notice.



NOTE!

A party who wishes to object to the petition, complaint, or motion MUST file a written objection at least three days before the scheduled hearing or appear at the hearing with the written objection. If no written objection is filed within the required time, the request will usually be granted without further inquiry by the court.

3. Hearing

A **hearing** is held. In some hearings, such as trials, each party may produce evidence. In other hearings, such as hearings on motions, no evidence is offered but each party may argue their position on the issue to the court. See Section 5(B) for more information about hearings.

4. Order or Judgment by the court

The Judge decides the case. The decision is the court=s **order or judgment**.

Informal Proceedings

Some probate matters involving decedent=s estates (See A.R.S. 14-3301- 14-3311) begin by filing an Application to the Probate Registrar. These matters are known as Ainformal= matters. Rather than the Aformal= process of filing a Petition, giving notice, and having a hearing before a Judge, informal proceedings involve the following steps:

1. Application to the Probate Registrar;
2. Statement of Registrar;
3. Notice to interested parties



NOTE!

Guardianship and/or conservatorship cases cannot proceed informally because due process gives the alleged incapacitated person the right to have a hearing.

B. PETITIONS, APPLICATIONS, COMPLAINTS, MOTIONS AND OTHER PLEADINGS

All **petitions, applications, complaints, objections, motions,** and other pleadings must comply with the Arizona Rules of Civil Procedure Rule 10(d) and Pima County Local Rule 9.1(d) and (e). They must also conform with the following requirements:

1. Pleadings must be legible and be double-spaced. Typed or computer generated documents are preferred. Handwritten documents are permitted but must be legible
2. Pleadings must contain the following information
 - ! Name, address, phone number of petitioner or attorney
 - ! Case caption - must include the decedent=s or ward=s name and his or her date of birth
 - ! Case number
 - ! Title of the document
 - ! Name, address, phone number of proposed fiduciary
 - ! Date signed
 - The signature of the party or the party=s attorney

- 3 Any petition requesting the appointment of a guardian, conservator, or personal representative must be accompanied by a copy of the Court=s General Order to the Fiduciary. [Pima County Local Probate Rule 9.1(f)(1)].

Information regarding forms is provided in Section 8. Please see also Arizona Rules of Civil Procedure, Rule 10(d); and Pima County Local Rules, Rule 9.1(d).



WARNING!

Pleadings are serious legal documents. The court may impose substantial sanctions on a party who files improper pleadings with the court. See Rule 11 of the Arizona Rules of Civil Procedure.

C. NOTICE TO INTERESTED PERSONS; PROOF OF NOTICE

1. What is Notice?

The Arizona Revised Statutes, Arizona Rules of Civil Procedure, and the Pima County Local Rules require that notice be given to interested persons. A party who files a pleading with the court must give notice. Neither the court nor the clerk of court will do that for you. Notice requires that the other interested persons receive the following:

1. A copy of your **pleading**, and
2. A copy of the **Notice of Hearing**, or **Order to Show Cause**, or other **Order** setting the hearing date.
3. The Notice of Hearing must include the **warning** required by Pima County Local Probate Rule 9.1(i)(7)(i).

The **general** probate notice requirements can be found in A.R.S. 14-1401.

Specific notice requirements for **guardianships** are in A.R.S. 14-5309.

Specific notice requirements in **conservatorships** are in A.R.S.14-5405.

2. Methods for Providing Notice

The type of notice you may be required to give to an interested party will depend on the requirements of the statute. The following is a description of each method.

a. Personal Service

By delivering a copy of the petition and notice of hearing to the person at his or her office or place of residence, if known. If a process server is used, the process server then files an Affidavit of Service with the court and gives a copy to you.

b. Notice by Mail

Mailing a copy of the petition and the notice of hearing to the person being notified. This can be done by certified, registered, or ordinary first class mail; and must be sent to his or her office; place of residence, if known; or post office address.

c. Published Notice

Notice by publication means publishing notice of the date, time, and location of the hearing in a newspaper of general circulation in the county where the hearing is being held. The Notice must be published three times prior to the hearing. The first notice must be at least 14 days prior to the hearing:



NOTE!

Notice may be given by publication only in the following circumstances:

- i. If the address or identity of the person is not known and cannot be ascertained with reasonable diligence.
- ii. When notice by publication is *required* by law.



If you do not give the required notice then any order the court makes will be invalid.

WARNING!

3. Proof of Notice

After giving notice, you must file a **Proof of Notice**. The Proof of Notice is filed in the court file and is evidence to the court that notice was properly provided. The Proof of Notice must comply with Local Rule 9 and must include the title of the document given, to whom the notice was given, the method by which notice was given, and the date notice was given. The Proof of Notice must be signed by the person who gave the notice.

5. Filing Documents and Obtaining a Hearing

Each new case opened at the Superior Court is assigned a case number. A file is then created into which documents and orders of the court are placed. Parties to a case may file documents in the court file upon the payment of an filing fee. **Only original documents are accepted for filing by the Clerk of Court.** Court files are kept in the custody of the Clerk of Court and are accessible by the general public. Files cannot be removed from the courthouse.

Documents mailed to or dropped off with the Clerk of Court are simply filed into the court file and will not be set for hearing unless you take the appropriate steps to set the matter for hearing. If you wish to have a hearing regarding the document you are filing, you must request a hearing and provide each interested party with a copy of each document filed. The Judge will not know you have filed a document nor take action on the matter unless you set the matter for hearing on the court calendar.



NOTE!

In order to have a matter decided by the Judge you must have your matter set for hearing. Merely filing a petition will not bring the matter to the attention of the Judge.

A. FILING DOCUMENTS

- ! File original documents and appropriate filing fee with the Clerk of Court by mailing or delivering to the following address:

Clerk of Court, Probate
110 W. Congress
Tucson, AZ 85701



NOTE!

You must pay a filing fee for each case in which you appear as a party. All checks must be made payable to the Clerk of the Superior Court.

- ! The Clerk of Court will not accept faxes or photocopies of documents for filing.
- ! Include a self-addressed stamped envelope and a copy if you wish to have a copy conformed and returned to you. The court will conform one copy of each document at no charge. The term Aconform≡ means the document is time/date-stamped by the Clerk of Court.

B. OBTAINING A HEARING

1. Types of Hearings

There are two types of hearings: **appearance** hearings, and **non-appearance** hearings. The Judge will determine which type of hearing will be set. You are not required to be present at Anon-appearance≡ hearings. You are required to be present at all appearance hearings.

2. How to Set a Matter for Hearing?

a. Obtaining a Hearing in Person

Step 1 File your original document(s)

Bring the following documents to the Probate Clerk=s desk in the Superior Court:

- i. Original, plus 1 copy of the document you wish to file (petition, motion, etc.)
- ii. Original, plus 2 copies of a Notice of Hearing

The Probate Clerk will file the original document and will give you back a conformed copy.

Step 2 Get a hearing date from the Calendar Clerk

Take the original, plus the 2 extra copies of the Notice of Hearing over to the Calendar Clerk=s Office in the Information Desk located on the first floor lobby of the court. The Calendar Clerk will insert a hearing date on your original Notice of Hearing, retain one copy and give the original and the remaining copy back to you.

Step 3 File your original Notice of Hearing

Go back to the Probate Clerk=s desk and file the original Notice of Hearing that now has a hearing date filled in by the Calendar Clerk. The Probate Clerk will conform your copy. Now that you have filed your petition and obtained a hearing date, your next step is to provide the proper notice of the hearing to all interested parties.

Step 4 Provide Notice of the Hearing

After you receive your conformed copy of the Notice of Hearing back from the court, you must immediately provide notice of the hearing date, time and location to all interested persons. See Section 3(C) above.

Step 5 File a Proof of Notice

You must provide proof to the court that you gave adequate notice to interested persons. To do so you must file a Proof of Notice that indicates to whom notice was provided, the date notice was given, and by what method notice was given. If you provide notice by publication, your proof of notice is the Affidavit of Publication from the newspaper that indicates the notice and date(s) of publication.

b. Obtaining a Hearing by Mail

Step 1 Mail the documents

Mail the following documents to the Probate Clerk's Office (address below):

- i. Original plus 1 copy of any document you wish to file
- ii. Original plus 2 copies of the Notice of Hearing
- iii. A self-addressed stamped envelope (make sure you have sufficient postage)

Clerk of Court, Probate
 110 West Congress Street
 Tucson, AZ 85701

Step 2 Hearing Date

The court will insert a hearing date on the original Notice of Hearing and mail a conformed copy back to you, using the self-addressed stamped envelope you provided.

Step 3 Provide Notice of the Hearing

After you receive your conformed copy of the Notice of Hearing back from the court, you must immediately provide notice of the hearing date, time, and location to all interested persons and then file a Proof of Notice with the court. See Section 4(C) above.

Step 4 File a Proof of Notice

You must provide proof to the court that you gave adequate notice to interested persons. To do so you must file a Proof of Notice that indicates to whom notice was provided, the date notice was given, and by what method notice was given. If you provide notice by publication, your proof of notice is the Affidavit of Publication from the newspaper that indicates the notice and date(s) of publication.



You cannot initiate a new case by mail. You must come to court to open a new case.

NOTE! 14

6. Appearing in Court - DO's and DON'Ts:

DO!

- Y Be Courteous. Be as polite to everyone as you want them to be to you.
- Y Address people as Mr. or Ms. or Doctor or other appropriate title. Do not refer to people by their first name. Address the Judge as AYour Honor.≡
- Y Wear appropriate clothes. Shorts, halter tops and T-shirts are not appropriate. Remove your hat when you enter the courtroom.
- Y Wait patiently and quietly until your case is called.
- Y When your case is called come forward and announce your presence for the record. When the Judge asks counsel to announce their presence you should state your name and state that you are representing yourself.
- Y When a witness is on the witness stand and an improper question is asked, you may stand and say AObjection, your Honor.≡ Be prepared to tell the Judge what rule of evidence makes the question objectionable.
- Y Arrive several minutes early. If a hearing is set for 9:00 a.m. be in the court room at 8:50 a.m. Otherwise your case may be called and may proceed without you and you may lose the case. If you are late the matter may be vacated and you may have to start over or the court might impose a fine or other sanction.
- Y Be present. Your absence does not necessarily prevent the case, hearing, or trial from proceeding without you.
- Y Be prepared. Have all of your exhibits and documents with you in court. Have copies of any document you intend to offer to the court as evidence.
- Y Bring something to write on, you may need to take note of dates, times, and other important information. You should also bring a calendar if you use one for your own appointments.

- Y Answer AYes≅ or ANo≅ to questions requiring such a response. Do not say AUh-huh≅ or Ayeah≅ or nod your head
- Y Obey all orders of the court, including orders to be carried out after you leave the Court.

DON=T!

- ≡ Do not bring any cell phones or pagers into the courtroom. If they ring, the Judge may order you to leave the courtroom or may confiscate the instrument.
- ≡ Do not use profanity or vulgarity in the courtroom.
- ≡ Do not raise your voice to the Judge or to anyone else in the courtroom.
- ≡ Do not threaten anyone.
- ≡ Do not make any racist, sexist or ethnic slurs or otherwise demeaning or disparaging remarks about anyone.
- ≡ The court does not offer child care services. Do not bring children into the Courtroom unless you have another adult to watch the child while you conduct your case.
- ≡ Do not make any intimidating gestures including any gang signs or signs that may be misinterpreted as gang signs.
- ≡ Do not interrupt anyone. Let each person speak as directed by the Judge.



WARNING!

Contempt of Court

A Judge may hold a person in Contempt of Court if he or she refuses (either directly or indirectly) to comply with the court's orders, or if a person behaves in a manner which lessens the dignity of the court. A Judge has the authority to hold a person in contempt of court for improper conduct and such conduct may result in a fine or a jail sentence. If a person fails to obey the orders of the court, the Judge could put that person in jail until such time as he or she does comply.

7. How to Find an Attorney

- A. **Pima County Bar Association Lawyer Referral Service**
Telephone: (520) 623-8258.
- B. **State Bar of Arizona**
Telephone: (520) 623-9944.
- C. See **Yellow Pages** of Telephone book under: *Attorneys/Wills, Estate Planning & Probate*.
- D. Ask a **friend co-worker** or **neighbor** for the name of a probate attorney.
- E. Ask **your attorney** from a prior case for a referral to a probate attorney.
- F. **Southern Arizona Legal Aid**
Telephone: (520) 623-9461
You must qualify financially in order to obtain services from Legal Aid.

8. Forms and Instructions

Some, but not all, forms and instructions are available from the following sources:

A. Pima County Bar Association

177 N. Church Ave.
Tucson, AZ 85701
Telephone: (520) 623-8258
www.pimacountybar.org.

B. Public Computers at the Courthouse

Computers are available for use by the public on the 2nd Floor of the courthouse in the Law Library. If you want to download forms from the internet, you must purchase a diskette from the law library for \$1.00 (this is to protect against viruses) and save forms to the diskette. Printing is available on a separate computer for a nominal charge.

C. Arizona Probate Code Practice Manual

For a more comprehensive set of instructions and forms, the Arizona Probate Code Practice Manual may be purchased from the State Bar of Arizona.

Telephone: (602) 340-7321

Cost: Approximately \$195.00 plus \$9.00 shipping.

D. Paralegals

Paralegals may help you prepare forms and follow required procedures. They may **not** represent you in court. See Yellow Pages of the Telephone Book under: Paralegals.

E. Pima County Superior Court Website

www.sc.co.pima.az.us

On the court=s homepage, click on
Judiciary ± Probate Bench ± Probate Forms Project.

F. Supreme Court Website

www.supreme.state.az.us/selfserv/

G. Clerk of Court - Probate Desk

110 W. Congress
Tucson, AZ 85701
Telephone: (520) 740-3230

9. The Court Calendar

A printed version of the court=s daily calendar is made available each morning at the Information Desk on the first floor of the courthouse. Copies of the court calendar are posted on bulletin boards outside the elevators on the floors that have courtrooms. The calendar is also available on the Internet at www.sc.co.pima.az.us. Changes to the calendar happen frequently throughout the day, therefore, the online calendar might not be completely up to date.

Part 2 - Guardianships and Conservatorships for Incapacitated Adults

1. What is a Guardian?

A guardian is a person who is appointed by the court to make decisions about the welfare of an incapacitated adult. A guardian has the same powers, rights, and responsibilities over the incapacitated adult that a parent has over his or her child; though, unlike a parent, a guardian is not liable for the actions of the incapacitated adult.

The appointment of a guardian may be necessary if an incapacitated adult is unable to make or communicate responsible decisions concerning his or her person because of mental illness, mental deficiency, illness, disability, chronic drug use or intoxication, incarceration, or disappearance. A person for whom a conservator is appointed is referred to as a **ward**.

Being appointed guardian is a very serious matter, and guardians are, at all times, under the jurisdiction of the court which appointed them. If you are uncertain about the duties and responsibilities of being a guardian, you should consult with an attorney.

2. What is a Conservator?

A conservator is a person who is appointed by the court to manage and protect the estate and affairs of a person who is no longer capable of doing so on their own. A person for whom a conservator is appointed is referred to as a **protected person**. Appointment of a conservator may be necessary if a person is unable to manage his or her estate and affairs because of mental illness, mental deficiency, illness, disability, chronic drug use or intoxication, incarceration, or disappearance.

Being appointed conservator is a very serious matter, and conservators are, at all times, under the jurisdiction of the court which appointed them. In addition, conservators are accountable (and may be liable if assets are used improperly) for all the assets in the protected person's estate over which they have control.

As conservator, you will be required to account for the estate's assets, and you may also be required to post a bond for the value of the estate plus one year's income from that estate. If you are uncertain about the duties and responsibilities of being a conservator, you should consult with an attorney.

3. Who is Involved in the Appointment Process?

A. Physician, Psychologist, or Registered Nurse

A medical report is necessary in all cases where the appointment of a guardian is sought.

Prior to the hearing the petitioner must make arrangements to have the incapacitated adult examined by a physician, psychologist, or registered nurse. The petitioner must then submit the medical report which has been prepared by a physician, psychologist, or registered nurse. If the adult has been examined within the last 30 days, then a new examination may not be necessary.

Insert the name of the physician, psychologist or registered nurse who has done or will do the exam in the Petition for Appointment of Physician, Investigator and Attorney.

You must arrange to have the adult examined by the court appointed physician, psychologist or registered nurse. There must be enough time for the physician, psychologist or registered Nurse to prepare his or her report to the court. Give the physician, psychologist or registered nurse a copy of the Order Appointing Physician, Investigator and Attorney and a copy of the Notice of Hearing.

After the exam you must mail or deliver a copy of the medical report to the Attorney and you must file the original Report with the court.

You may be able to obtain a blank medical report form from one of the sources listed in Section 8 - Forms and Instructions - on page 18.

B. Court Appointed Investigator

The adult must be interviewed by a court appointed investigator who must submit a written report to the court. The clerk will assign an investigator to your case.

You must send the Investigator a copy of the Order Appointing Physician, Investigator and Attorney and a copy of the Notice of Hearing.

C. Attorney

The adult must be represented by an attorney. If the adult has an attorney write the name of the attorney in the Petition for Appointment of Physician, Investigator and Attorney.

If the adult does not have an attorney the clerk will assign an attorney from the court=s list of attorneys who may be appointed in such cases.



NOTE!

You must send the Attorney a copy of the Order Appointing Physician, Investigator and Attorney and a copy of the Notice of Hearing.

4. What Forms Do I Need?

A. These forms are used when seeking permanent and (if requested, temporary) appointment as Guardian, Conservator, or Both.

Petition for the Appointment of Guardian, Conservator (or both) of an adult	<i>A request that the court appoint you as Guardian (or Conservator, or Guardian <u>and</u> Conservator). It must contain the reasons why a Guardian is necessary, and why you, rather than somebody else, should be appointed.</i>
Order appointing Guardian, Conservator (or both) of an adult	<i>The Court's order appointing you as Guardian (or Conservator, or Guardian <u>and</u> Conservator). If the Judge (or Commissioner) grants your petition he or she will sign the order. The next step is to have the Clerk of Court issue Letters of Guardianship and/or Conservatorship..</i>
Petition for Temporary Appointment of Guardian or Conservator (or both) of an adult	<i>A request that the court appoint you as Temporary Guardian (or Conservator, or Guardian <u>and</u> Conservator). It must contain the reasons why a Guardian is necessary, and why you, rather than somebody else, should be appointed. It should also state the reasons why an emergency exists. You cannot file for temporary appointment without filing a petition for permanent appointment.</i>
Order appointing Temporary Guardian or Conservator (or both) of an adult	<i>The Court's order appointing you as Temporary Guardian (or Conservator, or Guardian <u>and</u> Conservator). If the Judge (or Commissioner) grants your petition he or she will sign the order. The order will expire within a fixed period of time, usually on the same day as the hearing on the permanent petition. The next step is to have the Clerk of Court issue Letters of Appointment.</i>

B. These forms are used for the appointment of a physician, attorney for the ward, and court investigator.

Name of Form	Description
Petition for Appointment of Physician,	<i>Psychologist, or Registered Nurse) to examine</i>
Report.	<i>This is the Report of the Physician (or Psychologist, or Registered Nurse).</i>

C. These forms are used to provide notice to all interested parties.

Name of Form	Description
Notice of Hearing	<i>This is the form which you "serve" to each "interested party" in a case to give them notice of when the court will hold a hearing in your case. See section 4(c) on page 9 for more information about methods of giving Notice and to whom notice must be given.</i>
Proof of Notice	<i>You must file a Proof of Notice after giving Notice. You must state the names, addresses of those noticed, and the manner and date such notice was given.</i>
Waiver of Notice	<i>The proposed ward cannot waive notice unless they appear at the hearing. A competent spouse, parent, or adult child may waive notice by filing a Waiver of Notice.</i>

D. These documents contain information about you (the petitioner) , and sworn statements regarding your qualification to be a guardian or conservator.

Name of Form	Description
Verified Statement	<i>This is a sworn statement by you that you are exempt from the Supreme Court's private fiduciary licensing requirements. If you are related to the ward, or are not charging a fee for your services as guardian or conservator, you are exempt.</i>
Affidavit of Proposed Appointee	<i>A declaration which includes "yes/no" questions and answers to assist the court in evaluating your fitness to serve as a guardian or conservator.</i>
Probate Information Sheet	<i>Identifying information about you, the petitioner which the Court will use if, for any reason, a fiduciary warrant should be issued for your arrest.</i>
General Order to Guardian / Conservator	<i>You must read thoroughly and sign the General Order. The General Order contains information on some (but not necessarily all) of your fiduciary duties. If you have questions about the General Order, or about you duties as fiduciary, you should employ an attorney.</i>

E. These documents provide you with legal authority to act as a guardian or conservator.

Name of Form	Description
Acceptance of Appointment as Guardian of an adult	<i>This is your acceptance of your appointment. In accepting appointment you are swearing to perform, according to law, the duties of a guardian (or Conservator, or Guardian <u>and</u> Conservator).</i>
Letters of Guardianship / Conservatorship	<i>Letters are issued by the Clerk of Court. Letters of Appointment are written proof of your authority to act as Guardian (or Conservator, or Guardian and Conservator).</i>
Acceptance of Temporary Appointment as Guardian of an adult	<i>This is your acceptance of your appointment. In accepting appointment you are swearing to perform, according to law, the duties of a guardian (or Conservator, or Guardian <u>and</u> Conservator).</i>
Temporary Letters of Guardianship / Conservatorship	<i>Letters are issued by the Clerk of Court. Letters of Appointment are written proof of your authority to act as Guardian (or Conservator, or Guardian and Conservator).</i>

F. These forms are required to safeguard the ward's assets and to fulfill your continuing duties as guardian and / or conservator.

Name of Form	Description
Bond	<i>See section on "Bonds, Restricted Accounts, and Restrictions on Real Estate."</i>
Proof of Restricted Account	<i>A statement, signed by an officer of a financial institution, acknowledging that an account has been established, states the balance of the account, and states that no funds can be withdrawn from the account without an order from the court.</i>
Inventory and Appraisal	<i>A list of all assets in the conservatorship estate. assets include real and personal property, bank accounts, business interests, claims or causes of action that the incapacitated adult may have.</i>
Annual Report of Guardian	<i>A yearly report to the court on the status and well being of the ward.</i>
Annual Accounting	<i>A yearly accounting of the income and expenditure of the conservatorship estate.</i>
	<i>When you file the annual accounting you must petition the court to approve the accounting. You must also give notice of the hearing date which the court assigns for the review of annual accountings. See page 38.</i>

What forms do I use?

Permanent guardianship of an adult

1. Petition for the Appointment of Guardian of an adult.
2. Order appointing Guardian of an adult.
3. Petition for Appointment of Physician, Investigator, and Attorney.
4. Order Appointing Physician, Investigator, and Attorney.
5. Physician's Report.
6. Notice of Hearing.
7. Proof of Notice.
8. Waiver of Notice (if a party entitled to notice wishes to waive notice).
9. Verified Statement.
10. Affidavit of Proposed Appointee.
11. Probate Information Sheet.
12. General Order to Guardian / Conservator.
13. Acceptance of Appointment as Guardian of an Adult.
14. Letters of Guardianship.

Permanent conservatorship of an adult

1. Petition for the Appointment of Conservator of an adult.
2. Order appointing Conservator of an adult.
3. Petition for Appointment of Physician, Investigator, and Attorney.
4. Order Appointing Physician, Investigator, and Attorney.
5. Physician's Report.*
6. Notice of Hearing.*
7. Proof of Notice.*
8. Waiver of Notice (if a party entitled to notice wishes to waive notice).
9. Verified Statement.
10. Affidavit of Proposed Appointee.
11. Probate Information Sheet.
12. General Order to Fiduciary.
13. Acceptance of Appointment as Guardian of an adult.
14. Letters of Conservatorship.

* Usually not required except when ordered by the court.

Permanent guardianship and conservatorship of an adult

1. Petition for the Appointment of Guardian and Conservator of an adult.
2. Order appointing Guardian and Conservator of an adult.
3. Petition for Appointment of Physician, Investigator, and Attorney.
4. Order Appointing Physician, Investigator, and Attorney.
5. Physician's Report.
6. Notice of Hearing.
7. Proof of Notice.
8. Waiver of Notice (if a party entitled to notice wishes to waive notice).
9. Verified Statement.
10. Affidavit of Proposed Appointee.
11. Probate Information Sheet.
12. General Order to Guardian / Conservator.
13. Acceptance of Appointment as Guardian and Conservator of an adult.
14. Letters of Guardian and Conservator

Temporary guardianship of an adult

1. **All forms required for a permanent guardianship**
2. Petition for Temporary Appointment of Guardian of an adult.
3. Order appointing Temporary Guardian of an adult.
4. Acceptance of Temporary Appointment as Guardian of an adult.
5. Temporary Letters of Guardianship.

Temporary conservatorship of an adult

1. **All forms required for a permanent conservatorship.**
2. Petition for Temporary Appointment of Conservator of an adult.
3. Order appointing Temporary Conservator of an adult.
4. Acceptance of Temporary Appointment as Conservator of an adult.
5. Temporary Letters of conservatorship.

Temporary guardianship and conservatorship of an adult

1. All forms required for a permanent guardianship and conservatorship.
2. Petition for Temporary Appointment of Guardianship and Conservator of an adult.
3. Order appointing Temporary Guardians and Conservator of an adult.
4. Acceptance of Temporary Appointment as Guardians and Conservator of an adult.
5. Temporary Letters of guardianship and conservatorship.

5. Giving Notice in Guardianship / Conservatorship cases

If you apply to the court to become a **guardian**, you must give notice to the following persons:

1. The **ward**, the **ward's spouse**, the **ward's parents**, and the **ward's adult children**. When giving notice to these persons, notice must be by personal service. If none of these can be notified then you must give notice to **at least one of the ward's closest living relatives**.
2. Any person who is serving as **guardian** or **conservator** or who has care and custody of the ward.
3. Any person who has filed a **demand for notice**.

See A.R.S. §14-5309.

For more information, see page 9.

If you apply to the court to become a **conservator**, you must give notice to the following persons:

1. The **ward** (also called a **protected person**) if they are over 14 years of age. Notice must be by personal service.
2. The **ward**, the **ward's spouse**, the **ward's parents**, and the **ward's adult children**. When giving notice to these persons, notice must be by personal service. If none of these can be notified then you must give notice to **at least one of the ward's closest living relatives**.
3. Any person who is serving as **guardian** or **conservator** or who has care and custody of the ward.
4. Any person who has filed a **demand for notice**.

See A.R.S. §14-5405.

For more information, see page 9.



NOTE!

Waiver of Notice: A competent spouse, parent or adult child may waive notice. The proposed ward or protected person cannot waive notice unless he or she attends the hearing.

6. How Do I Become Appointed as Guardian and/or Conservator?

For a permanent appointment, you must take the following steps:

Step 1

Complete in full and file the following forms with the Clerk of Court at the Probate Desk:

1. Petition for Appointment of Guardian /Conservator of an Adult.
2. Waiver of Notice, if any.
3. Verified Statement.
4. Affidavit of Proposed Appointee.
5. Probate Information Sheet.
6. Acceptance of Court Appointment as Guardian.
7. General Order to Fiduciary.
8. Petition for Appointment of Physician, Investigator and Attorney.*
9. Order Appointing Physician, Investigator and Attorney.*
(Note: This must be signed by the Probate Counsel, Commissioner, or Judge).

Step 2

Obtain a hearing date from the commissioner's office.

Step 3

Have the order Appointing of Physician, Investigator, and Attorney signed.*

Step 4

Give Notice. Notice must be either mailed or delivered at least 21 days before the hearing.

Step 5

Arrange to have the adult examined by the court appointed Physician, Psychologist, or Registered Nurse.*

Step 6

The court appointed attorney and investigator will want to meet with the ward. You must cooperate with their efforts.

Step 8

File the Order Appointing Guardian / Conservator and the Letters of Guardian / Conservator. Have letters issued.

Step 9

After you are appointed as a conservator then you must complete the steps listed in "Additional Steps for Conservator" on page 35.

Step 7

Hearing before commissioner.

1. Attend the Hearing.
2. Bring the proposed ward if he or she is willing and able to come to court.
3. Bring an Order Appointing Guardian / Conservator of an Adult.
4. Bring Letters of Guardian / Conservator.

Step 10

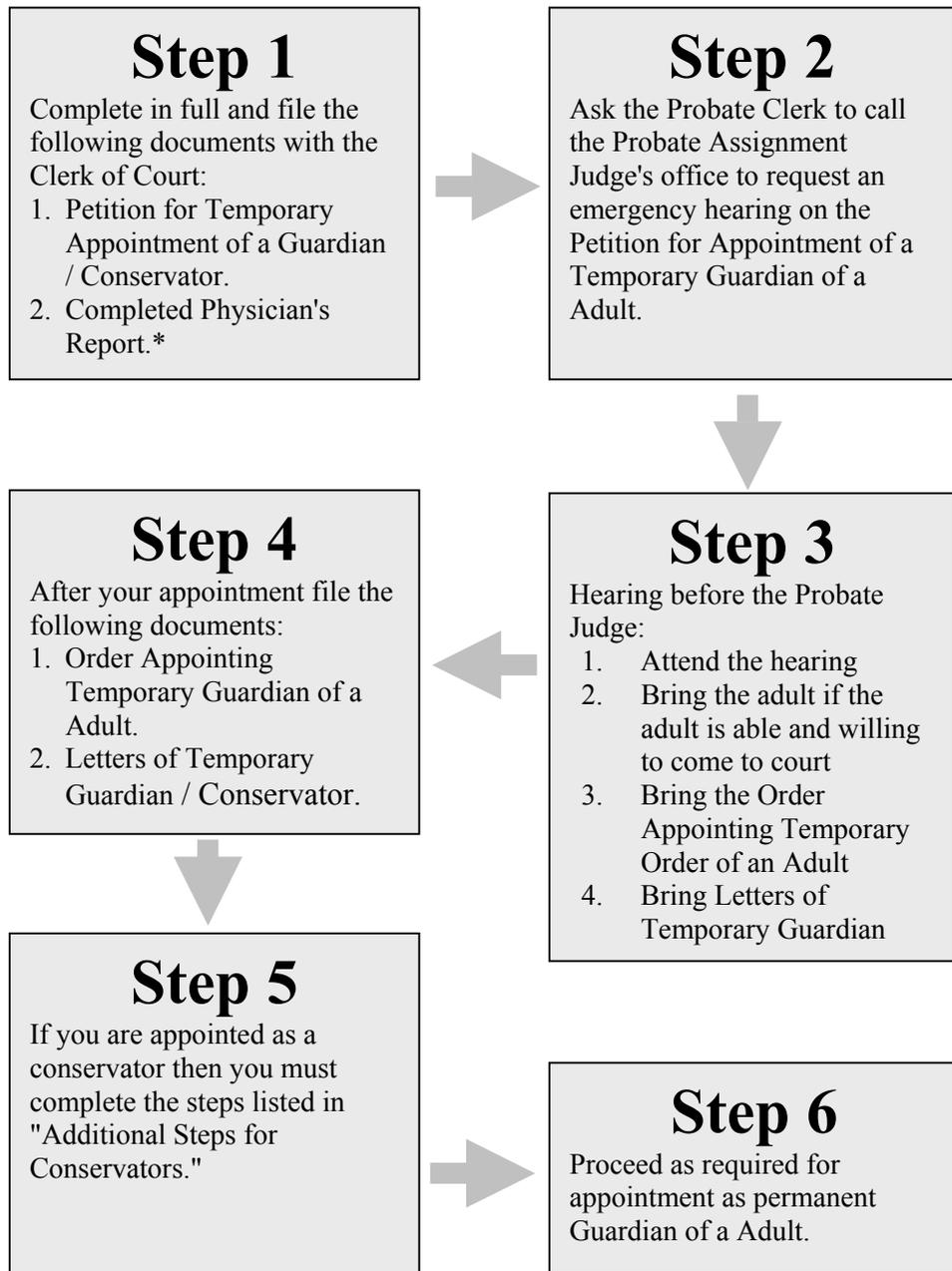
For additional steps go to "Your Continuing Obligations as Guardian / Conservator" on page 36.

Continued from previous page

See next page

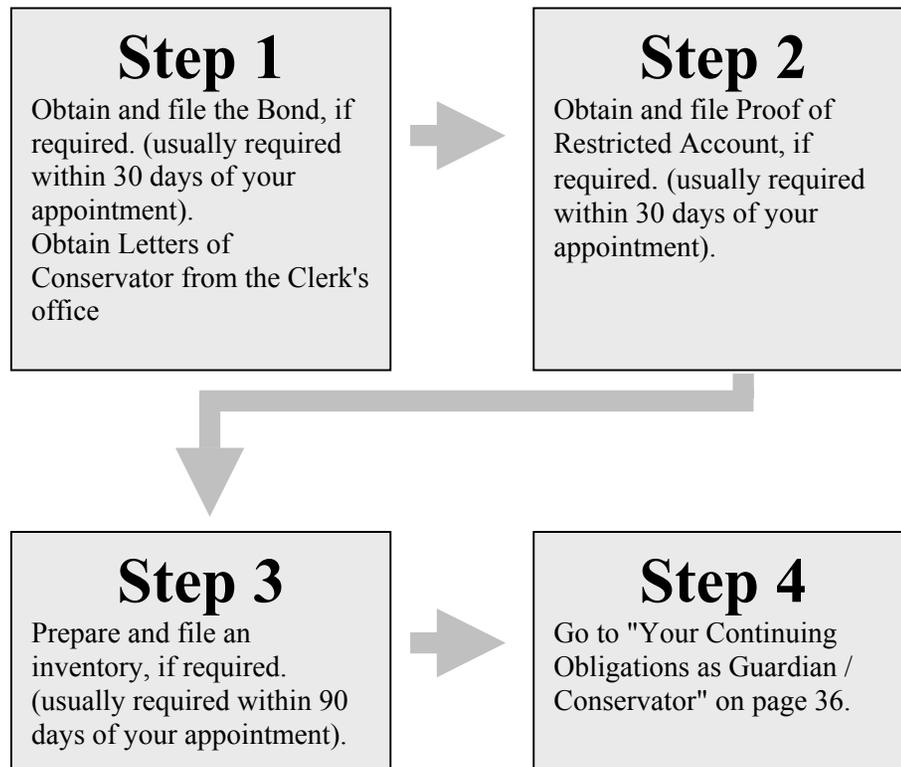
* Physician generally not required for conservatorships.

For a **temporary appointment** you must take the following steps in addition to those steps required for a permanent appointment.



* Physician generally not required for conservatorships.

Additional Steps for Conservators



7. For Conservators: Bonds, Restricted Accounts, and Restrictions on the Sale of Real Estate

A. What is a bond?

A bond is a type of insurance policy required by law to protect the estate from any losses caused by the conservator's failure to perform properly his or her duties.

B. What bond is required in a Conservatorship?

1. General Rule:

A3603 bond is required for the value of the assets plus one year=s income. See A.R.S. §14-3603.

2. Exceptions

The amount of the bond may be reduced by the value of the following:

- a. real estate if it cannot be sold or leased for more than one year without court order.
- b. funds placed in a federally insured account with restrictions on the withdrawal of funds from the account.

C. How to find a bonding company

Yellow Pages of Telephone Book: Bonds - Surety and Fidelity

D. Approximate Cost of a bond

Bond premiums vary, depending on the value of the estate. The cost of the bond is a permissible charge against the estate.

Safeguarding the Estate



Bond.

A.R.S. §14-3603, 3604, 3606. Must be for value of all unrestricted assets (plus one year's income).



Restrictions on the sale of real estate

Sale or lease for more than one year only by order of the court.



Restricted bank accounts

Withdrawals permitted only by order of the court.

E. Restricted Account

In order to permit the bond to be reduced by the amount of such account, the account must be with a federally insured bank, savings and loan or credit union in Arizona.

The bank, savings and loan or credit union must sign a Proof of Restricted Account. You then must file the Proof of Restricted Account with the court. No withdrawals -of either principal or income - will be permitted unless you obtain a court order, authorizing the withdrawal. To obtain an order permitting withdrawal you must petition the court, set a hearing date, give notice to all interested persons. You must then appear at the hearing to explain why the withdrawal should be authorized.

F. Restrictions on the sale of real estate.

In order to permit the bond to be reduced by the value of any real estate, the court must restrict the Letters of Appointment and the Order appointing the conservator by adding the following language: AReal estate may not be sold or leased for a period in excess of one year without order of the court.≡

8. Your Ongoing Duties as Guardian / Conservator

A. Conservators

1. Inventory

You will be required to file an inventory no later than 90 days after your appointment. An inventory is a list of all assets in the conservatorship estate. Assets include real and personal property, bank accounts, business interests, and claims or causes of action that the incapacitated adult may have.

2. Accountings:

You will be required to file an annual accounting of all income and expenditure from the estate, unless the court specifically orders otherwise. Accounting forms may be available from the sources listed on page 18.

If transfer of all the assets in the estate is restricted, and the court finds that no bond is required, then the court may waive the requirement to file an annual accounting. A final accounting will be required, however, when the conservatorship is terminated.

The court will set a date on which the annual accounting year end. This will be on one of four possible dates: March 31, June 30, September 30 or December 31. The court will also set a date when the court will have a hearing to review the annual accounting. You must file the accounting, no less than 21 days before the hearing.

The dates will be as follows:

Annual Accounting Year End	Due date for filing annual accounting	Hearing to review Annual Accounting
March 31	June 10	June 30
June 30	September 10	September 30
September 30	December 11	December 31
December 31	March 11	March 31

After your initial appointment you will receive notification of the above dates from the court. On the annual accounting year end you should begin work on the accounting, you will have about 70 days to complete the accounting. You must petition the court to approve the accounting by filing the appropriate petition with the court (see page 27). You also must provide notice of the hearing (see pages 9 and 31) to all interested parties. You must also prepare an Order Approving Annual Accounting, take it to the probate clerk, and ask the clerk to lodge the order in the court file.



If the hearing date for review of the accounting falls on a weekend or holiday then the court will set the hearing for the next business day the courts are open.

3. Terminating a Conservatorship

- A. When the adult dies you must notify the court of the death and petition to terminate the conservatorship
- B. If the adult recovers and a conservatorship is no longer required then an interested person may petition the court to terminate the conservatorship and discharge the conservator from liability.
- C. Final Accounting / Discharge

4. Changes of address

The Conservator **MUST** advise the court in writing of any change of address within 30 days of the move.

If the incapacitated adult moves to a different county in Arizona the conservator must petition to change the venue of the guardianship to the new county.

If the incapacitated adult moves out of state the conservator must file a conservatorship in the new state. After appointment in the new state the conservator must petition to terminate the Arizona conservatorship

5. Use of the adult's assets

The conservator is permitted to use the adult's income and assets to pay for the incapacitated adult's **reasonable** housing, food, clothing, education, vacation, transportation, or medical attention. The conservator's expenditures are subject to review by the court. Any other use must be reviewed by the court before expenditure of the funds. In addition, the assets must be invested in a prudent manner.



The conservator may be liable for any improper use of the adult's assets.

WARNING!

6. Income taxes and insurance

As conservator you must file any required State and Federal income tax returns for the protected person. The conservator is required to have those returns filed and will be liable for any penalty and interest due to failure to file timely returns. The conservator should also be sure that the protected person has medical insurance and appropriate liability insurance.

7. Investing the protected persons assets

As conservator you have a duty of observe the standard in dealing with the assets of another that would be observed by a prudent person dealing with the assets of another, and if the conservator has special skills or is named as conservator on the basis of representations of special skills or expertise, he or she is under a duty to use those skills.

8. Conservator's Fees

Reasonable conservator's fees are a legitimate conservatorship expense, and may be charged against the estate of an incapacitated person.

B. Guardians

1. Annual Report of Guardian:

As guardian you will be required to file and Annual Report of Guardian This is a yearly report to the court on the status and well being of the ward. The court will set a non-appearance hearing to review the report, usually on the anniversary of your appointment as guardian. The Annual Report of Guardian must be filed at least 21 days before this hearing.

2. Termination of Guardianship

- A. When the adult dies you must notify the court of the death and petition to close the guardianship.
- B. If the adult recovers and a guardianship is no longer required then an interested person may petition the court to terminate the guardianship.

3. Change of Address

The Guardian **MUST** advise the court in writing of any change of address within 30 days of the move.

If the adult moves to a different county in Arizona the Guardian must petition to change the venue of the guardianship to the new county.

If the ward moves out of state the guardian must file for guardianship in the new state. After appointment in the new state the guardian must then petition to terminate the Arizona guardianship.

4. Guardian's Fees

Reasonable guardian's fees are a legitimate expense, and may be charged against the estate of an incapacitated person. If you are not related to the ward,

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